LEX REX INSTITUTE 1 ALEXANDER H. HABERBUSH, ESQ. SBN 330368 2 DEBORAH L. PAULY, ESQ. SBN 350345 444 West Ocean Boulevard, Suite 1403 3 Long Beach, CA 90802 4 Telephone: (562) 435-9062 E-mail: AHaberbush@LexRex.org 5 **HEATH LAW, PLLC** RYAN L. HEATH, ESQ. AZ SBN 036276* 7 AMBER R. TERRY, ESQ. DC SBN 1766035* 16427 N. Scottsdale Rd., Suite 370 Scottsdale, Arizona 85254 9 Telephone: (480) 522-6615 E-mail: ryan.heath@thegavelproject.com **10** *pro hac vice 11 Attorneys for Plaintiffs 12 UNITED STATES DISTRICT COURT 13 CENTRAL DISTRICT OF CALIFORNIA 14 CASE NO. 8:23-cv-00306-DOC-ADS B.B., a minor by and through her 15 mother, Chelsea Boyle, Assigned for All Purposes to: Hon. David O. Carter – Courtroom 10A 16 Plaintiffs, **PLAINTIFF'S STATEMENT** 17 OF **GENUINE** OF DISPUTES v. 18 **MATERIAL FACTS** AND 19 CONCLUSIONS **OF** LAW IN CAPISTRANO UNIFIED SCHOOL OPPOSITION OF **DEFENDANTS'** DISTRICT; JESUS BECERRA, an 20 **MOTION FOR SUMMARY** individual in his individual and official 21 **JUDGMENT** capacities; CLEO VICTA, individual in her individual and official 22 **Hearing Date:** capacities; and DOES 1 through 50, February 12, 2024 23 Date: inclusive, Time: 8:30 a.m. 24 Dept.: 10A Defendants. 25 Trial Date: March 12, 2024 26 27 Complaint Filed: February 21, 2023 28

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TO THE COURT, DEFENDANTS, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that B.B., a minor by and through her mother, Chelsea Boyle ("B.B.") ("Plaintiff") hereby submits the following Statement of Genuine Disputes of Material Facts and Conclusions of Law in opposition of Defendants' Motion for Summary Judgment, either in full or in part, pursuant to L.R. 56-2.

STATEMENT OF GENUINE DISPUTES OF MATERIAL FACTS AND CONCLUSIONS OF LAW

10		
11	Defendant's Uncontroverted Facts and	Plaintiff's Response and
12	Supporting Evidence	Supporting Evidence
12	#1 (Plaintiff made a drawing that stated "Black	Undisputed.
13	Lives Mater" and "any life".)	-
14	(Deposition of Plaintiff B.B. Vol. 1, taken October	
15	5, 2023 ("B.B. Depo Vol. 1") at Pg. 13:4-6;	
15	Declaration of Courtney L. Hylton ("Hylton	
16	Decl.") at ¶ 2, Ex. A)	
17	#2 (Plaintiff made the drawing on her own; she was	Undisputed.
18	not instructed to make the drawing by anyone.)	
10		
19	(B.B. Depo Vol. 1, 27:22-24; Hylton Decl. ¶ 2, Ex.	
20	A)	
20	#3 (Plaintiff gave the drawing to a classmate, M.C.)	Undisputed.
21		
22	(B.B. Depo Vol. 1, 17:15-16; Hylton Decl. ¶ 2, Ex.	
22	A)	
23	#4 (M.C.'s mother, Cathy Clay, saw the drawing.)	Disputed. Clay did not see the
24		drawing until M.C. was
24	(Deposition of Cathy Clay taken October 4, 2023	home, off campus and outside
25	("Clay Depo") at Pg. 18:7-10; Hylton Decl. ¶ 4, Ex.	of school hours.
26	(C)	(((3) 5
20		("Clay Depo" at pg. 18:2-9)
27	#5 (Cathy Clay informed Becerra about the	Disputed. Becerra did not
28	drawing via email.)	"see" the e-mail until a
40	, , , , , , , , , , , , , , , , , , ,	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

1		counselor sent it over.
	(Clay Depo 27:17-19; 93:11-14; Hylton Decl. ¶ 4,	
2	Ex. C)	("Becerra Depo" at pg. 12:
3		21-25.)
4	#6 (Clay's email stated, "My husband and I will	Undisputed.
	not tolerate any more messages given to our	(01: 4: 11
5	daughter at school because of her skin color As	(Objection. Hearsay.)
6	the administrator we trust you know the actions that need to be taken to address the issue.")	
7	that need to be taken to address the issue.	
8	(Hylton Decl. ¶ 5, Ex. D; Clay Depo, 93:1-14.)	
	#7 (Becerra called Clay and Clay told him the	Disputed. Clay told Becerra
9	drawing came from Plaintiff and Becerra said he	the drawing came from
10	would investigate.)	Plaintiff.
11	(Clay Depo, 35:25-36:7; Hylton Decl. ¶ 3, Ex. C)	("Becerra Depo" at pg.16: 8-
12		25.)
13		(Objection. Hearsay.)
14	#8 (Plaintiff told Becerra she drew the drawing.)	Undisputed.
15	(B.B. Depo Vol. 1, 20:20-25; Hylton Decl. ¶ 2, Ex.	
16	(B.B. Bepo Vol. 1, 20.20 23, Hytton Beel. 2, Ex. A)	
	#9 (Plaintiff alleges Becerra told Plaintiff that the	Disputed. Becerra told
17	drawing was inappropriate.)	Plaintiff the drawing was
18		"inappropriate" and "racist."
19	(B.B. Depo Vol. 1, 33:24 – 34:4; Hylton Decl. ¶ 2,	
	Ex. A)	("B.B. Depo" Vol. 1, at pg
20	#10 (Plaintiff claims Becerra told Plaintiff she was	33:16-20) Undisputed.
21	not allowed to draw anymore.)	Ondisputed.
22	not une wed to draw drifting to	
23	(Deposition of Plaintiff B.B. Vol. 2, taken	
	November 6, 2023 ("B.B. Depo Vol. 2") 51:11-13;	
24	Hylton Decl. ¶ 3, Ex. B)	
25	#11 (Plaintiff further alleges Becerra told Plaintiff	Undisputed.
26	to apologize to M.C.)	
	(B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A)	
27	(= = = = = = = = = = = = = = = = = = =	Disputed. B.B. spoke to M.C.
28	3	

1	#12 (Plaintiff claims she apologized to M.C.,	after the initial apology, when
1	saying "I'm sorry for the drawing" and nothing	2 00
2	else.)	classroom after recess and,
3		again, apologized.
3	(B.B. Depo Vol. 1, 22:19-23; Hylton Decl. ¶ 2, Ex.	
4	A)	(B.B. Depo. Vol. 1, pg.
5		34:10-12).
	#13 (In all his conversations with Clay, Becerra	Undisputed.
6	referred to the drawing as from an innocent child.)	Ondisputed.
7		
8	(Clay Depo 41:17-42:5; Hylton Decl. ¶ 4, Ex. C)	
O	#14 (Plaintiff alleges she was told by Ms. Vera and	TT 1' 4 1
9	Ms. Mesa that she had to sit out from recess for	Undisputed.
10	two weeks.)	
11	(B.B. Depo Vol. 2, 61:4-6; Hylton Decl. ¶ 3, Ex. B)	
12	#15 (Plaintiff claims neither Vera nor Mesa told	Undisputed.
13	Plaintiff why she had to sit out from recess.)	Chaispatea.
13		
14	(B.B. Depo Vol. 2, 56:17-24; 57:17-23; Hylton	
15	Decl. ¶ 3, Ex. B)	
	#16 (Neither Vera nor Mesa said anything to	Undisputed.
16	Plaintiff about the drawing.)	-
17	(D.D. Danie Wall 2.55-14.17-57-0.10-Hadran Dani	
	(B.B. Depo Vol. 2 55:14-17; 57:8-10; Hylton Decl.	
18	¶ 3, Ex. B) #17 (Plaintiff alleges Vera and Mesa said nothing	Undianutad
19	else to Plaintiff about sitting out from recess.)	Oldisputed.
20	cise to I familii about sitting out from recess.)	
	B.B. Depo Vol. 2 61:15-17; Hylton Decl. ¶ 3, Ex.	
21	B	
22	#18 (Becerra did not tell Plaintiff she had to sit out	Undisputed.
23	from recess.)	-
23	(B.B. Depo Vol. 2 63:13-15; Hylton Decl. ¶ 3, Ex.	
24	B)	
25	#19 (There was no email documentation of this	Undisputed.
	interaction with Plaintiff and Becerra.)	
26		
27	(Deposition of Jesus Becerra, taken October 11,	
28	2023 ("Becerra Depo"), 66:19-22; Hylton Decl. ¶	
∠ ∪	4	

1	6, Ex. E)	
1	#20 (Plaintiff's missing recess for two weeks was	Undisputed.
2	not documented in her discipline file.)	-
3		(Objection. Hearsay and Lack
	(Hylton Decl. ¶ 8, Ex. G (CUSD 000275-000276))	of Foundation.)
4	#21 (Plaintiff continued to draw at school after Mr.	Disputed. Plaintiff stopped
5	Becerra talked to her.)	drawing in the presence of
6		others and only drew in secret
6	(B.B. Depo Vol. 2, 55:1-3; Hylton Decl. ¶ 3, Ex. B)	out of fear of punishment.
7		
8		(B.B. Depo Vol. 1, 32:3-9;
		Hylton Decl. ¶ 3, Ex. B)
9		
10	#22 (At no time when Plaintiff was at school was	Disputed. Becerra made B.B.
11	Becerra mean to her.)	feel ashamed and
	,	embarrassed for her drawing.
12	(B.B. Depo Vol. 2, 51:2-5; Hylton Decl. ¶ 3, Ex. B)	Becerra also called B.B. a
13		"liar" when B.B. wrote him a
14		letter asking him to be kinder
14		in the response of Boyle
15		going through the appeals
16		process.
		(D.D. Dana Wal 2 na 70.10
17		(B.B. Depo Vol. 2, pg. 79:10-19).
18	#23 (Plaintiff does not really ever think about the	Disputed. B.B. began and
19	drawing incident.)	continued therapy to help
		with the aftermath of the
20	(B.B. Depo Vol. 2 64:12-18; 64:25 – 65:2; Hylton	drawing incident.
21	Decl. ¶ 3, Ex. B)	
22		(B.B.'s Response to Victa's
		Interrogatories No. 6).
23	#24 (Plaintiff never filed a Tort Claim prior to	Disputed. Chelsea Boyle,
24	filing her Complaint.)	Plaintiff's mother and
25	(Plaintiff's Response to District's Request for	guardian ad litem, filed a tort claim on Plaintiff's behalf
	Admissions No. 16; Hylton Decl. ¶ 9, Ex. H)	and was going through the
26	Transcrond (10, 11) tooli Beel. 7, DA. 11)	internal complaint process
27		with CUSD, telling them she
28		
40	DI AINTOIDESC CE A EDMENTE OF CENTILINE D	

1		was seeking counsel, giving
		notice to the Defendants of
2		the claims herein.
3		
		("Defendants' Motion for
4		Summary Judgment" at pg.
5	W07 (0) 00 0000 N5 XV	10)
6	#25 (On August 23, 2022, Ms. Victa was asked to	Undisputed.
	come outside by Mr. Becerra to help with a student	
7	who would not go back to class.)	
8	(Deposition of Cleo Victa taken on October 11,	
9	2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7,	
	Ex. F.)	
10	#26 (Victa was a counselor at Viejo Elementary	Undisputed.
11	during this school year.)	
12		
	(Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)	Di da Da Calada
13	#27 (Ms. Victa was concerned that Plaintiff's	Disputed. Defendants'
14	brother would leave campus.)	supporting evidence merely shows that Victa was "a
15	(Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	little" concerned but that
15	(View Depo 20.5-11, Hytton Deel. 7, Ex. 1)	Becerra was <i>not</i> concerned
16		about safety issues regarding
17		the students at this time.
18		("Victa Depo" at pg. 26:9-11;
19		pg. 24:21-23; pg. 25:2)
20	#28 (Ms. Victa was concerned for Plaintiff and her	Disputed. Defendants'
	brother's safety because they were not in class.)	supporting evidence does not
21	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	distinguish which class Plaintiff or her brother were
22	Victa Depo 34.8-14, Hytton Deci. 7, Ex. 1	to be in, if any class at all,
23		instead of recess, for
		example.
24		•
25		("Victa Depo" at pg. 18:21-
26		23)
	#29 (Ms. Victa was making sure that Plaintiff was	Disputed.
27	safe.)	
20		

1		(B.B.'s Response to
1	(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	Interrogatories propounded
2	(· · · · · · · · · · · · · · · · · · ·	by Cleo Victa No. 18)
2	#30 (Ms. Victa only asked Plaintiff "Can you go	,
3	get your brother? I need to talk to him" prior to	Undisputed.
4	Plaintiff going into the bathroom.)	
5		
	(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex.	
6	B)	
7	#31 (During this interaction, Ms. Victa was being	Disputed. Victa was
	nice to Plaintiff.)	aggressively following B.B.,
8		even to the door of the girls'
9	(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex.	restroom.
10	B)	
		(B.B.'s Response to
11		Interrogatories propounded
12		by Cleo Victa No. 18)
	#32 (Ms. Victa never spoke with Plaintiff about the	Undisputed.
13	drawing.)	1
14		
	(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3,	
15	Ex. B)	
16	#33 (Becerra was far away from Plaintiff.)	Disputed. Becerra was close
		to Plaintiff.
17	(B.B. Depo Vol. 2, 75:17-19; Hylton Decl. ¶ 3, Ex.	
18	B)	(Plaintiff's Exhibit A; Video
		footage)
19	#34 (During this interaction, Mr. Becerra was not	Undisputed.
20	moving, he was talking on his walkie talkie.)	1
21	(B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3,	
22	Ex. B)	
23	#35 (After Becerra talked to Plaintiff about the	Disputed to the extent that
23	drawing, he never talked to her about the drawing	Becerra made B.B. feel
24	again.)	ashamed and embarrassed for
25		her drawing. Becerra also
	(Decl. ¶ 3, Ex. B)	called B.B. a "liar" when
26		B.B. wrote him a letter asking
27		him to be kinder in the
		response of Boyle going
28	7	

through the appeals process.
(Response to Interrogatory No. 15(3))

Defendants are not separately entitled to partial summary judgment for any of the following causes of action:

1. Plaintiff's First Cause of Action under 42 *U.S.C.* § 1983 for the Violation of Plaintiff's First Amendment Rights against Becerra is not barred by qualified community as Plaintiff does have evidence to support a constitutional violation.

GENUINE DISPUTES OF MATERIAL FACTS

12				
13	Defendant's Uncontroverted Facts and	Plaintiff's Response and		
14	Supporting Evidence	Supporting Evidence		
15	#1 (Plaintiff made a drawing that stated "Black Lives Mater" and "any life".)	Undisputed.		
16				
17	(Deposition of Plaintiff B.B. Vol. 1, taken October 5, 2023 ("B.B. Depo Vol. 1") at Pg. 13:4-6;			
18	Declaration of Courtney L. Hylton ("Hylton			
19	Decl.") at ¶ 2, Ex. A)			
	#3 (Plaintiff gave the drawing to a classmate, M.C.)	Undisputed.		
20	(B.B. Depo Vol. 1, 17:15-16; Hylton Decl. ¶ 2, Ex.			
21	A)			
22	#5 (Cathy Clay informed Becerra about the	*		
23	drawing via email.)	"see" the e-mail until a		
	(Clay Dana 27:17 10: 02:11 14: Hylton Daal ¶ 4	counselor sent it over.		
24	(Clay Depo 27:17-19; 93:11-14; Hylton Decl. ¶ 4, Ex. C)	("Becerra Depo" at pg. 12:		
25	LA. Oj	21-25.)		
26	#6 (Clay's email stated, "My husband and I will	Undisputed.		
27	not tolerate any more messages given to our	1		
41	daughter at school because of her skin color As			

1 2	the administrator we trust you know the actions that need to be taken to address the issue.")	
3	(Hylton Decl. ¶ 5, Ex. D; Clay Depo, 93:1-14.)	
4	#8 (Plaintiff told Becerra she drew the drawing.)	Undisputed.
5	(B.B. Depo Vol. 1, 20:20-25; Hylton Decl. ¶ 2, Ex.	
6	A)	
7 8	#9 (Plaintiff alleges Becerra told Plaintiff that the drawing was inappropriate.)	Disputed. Becerra told Plaintiff the drawing was
9		"inappropriate" and "racist."
10	(B.B. Depo Vol. 1, 33:24 – 34:4; Hylton Decl. ¶ 2, Ex. A)	("B.B. Depo" Vol. 1, at pg
11	#11 (Plaintiff further alleges Becerra told Plaintiff to apologize to M.C.)	33:16-20) Undisputed.
12 13	(B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A)	
14	#18 (Becerra did not tell Plaintiff she had to sit out from recess.)	Undisputed.
1516	(B.B. Depo Vol. 2 63:13-15; Hylton Decl. ¶ 3, Ex. B)	
17	#22 (At no time when Plaintiff was at school was	Disputed. Becerra made B.B.
18	Becerra mean to her.)	feel ashamed and embarrassed for her drawing.
19	(B.B. Depo Vol. 2, 51:2-5; Hylton Decl. ¶ 3, Ex. B)	
20		letter asking him to be kinder
21		in the response of Boyle going through the appeals
22		process.
23		(B.B.'s Response to Becerra's
24		Interrogatories No. 15(3))
25		

2. Plaintiff's Fifth Cause of Action under 42 *U.S.C.* § 1983 for Retaliatory Harassment against Becerra is not barred by qualified immunity as Plaintiff

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27

28

has supporting evidence of a constitutional violation.

GENUINE DISPUTES OF MATERIAL FACTS

3		
4	Defendant's Uncontroverted Facts and	Plaintiff's Response and
5	Supporting Evidence	Supporting Evidence
6	#11 (Plaintiff further alleges Becerra told Plaintiff to apologize to M.C.)	Undisputed.
7		
8	(B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A)	

#15	(Plaintif	f claims	neither	Vera	nor	Mesa	told	Undisputed.
Plain	itiff why	she had	to sit out	from	reces	ss.)		

(B.B. Depo Vol. 2, 56:17-24; 57:17-23; Hylton	((B.B.	Depo	Vol.	2,	56:17-24;	57:17-23;	Hylton
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12	Decl. ¶ 3, Ex. B)

13	#16	(Neither	Vera	nor	Mesa	said	anything	to	Undisputed.
11	Plair	ntiff about	the dra	awing	g.)				Ondisputed.
14									

15 (B.B. Depo Vol. 2 55:14-17; 57:8-10; Hylton	Decl.
--	-------

#18 (Becerra did not tell Plaintiff she had to sit out	Undisputed
from recess.)	Ondisputed.

(B.B. Depo Vol. 2 63:13-15; Hylton Decl. ¶ 3, Ex
--

(D.D. Depo	VOI. 2 03.13	13, Trytton Deen.	∥ J, LA.
R)			

#20 (Plaintiff's missing recess for two weeks was	Undisputed
not documented in her discipline file.)	enaispaica.

(Hylton Decl. 9	[8, Ex. G (CUSD	000275-000276))

#21 (Plaintiff continued to draw at school after Mr.	Undisputed
Becerra talked to her.)	Ondisputed.

(B.B. Depo	Vol. 2, 55:1-3	3; Hylton De	cl. ¶ 3, Ex. B)
(2.2.2 rp		,, 11, 10011 = 0	010 0 , = 110 =)

	#25 (On August 23, 2022, Ms. Victa was asked to	Un
l	come outside by Mr. Becerra to help with a student	On

ndisputed.

1	who would not go back to class.)	
2	(Deposition of Cleo Victa taken on October 11,	
3	2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7,	
4	Ex. F.)	
5	#26 (Victa was a counselor at Viejo Elementary	Undisputed.
6	during this school year.)	
7	(Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)	
8	#27 (Ms. Victa was concerned that Plaintiff's	Disputed. Defendants'
9	brother would leave campus.)	supporting evidence merely shows that Victa was "a
10	(Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	little" concerned but that
11		Becerra was <i>not</i> concerned about safety issues regarding
12		the students at this time.
13		("Victa Depo" at pg. 26:9-11;
14		pg. 24:21-23; pg. 25:2)
15	#28 (Ms. Victa was concerned for Plaintiff and her	Disputed. Defendants'
16	brother's safety because they were not in class.)	supporting evidence does not distinguish which class
17	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	Plaintiff or her brother were
18		to be in, if any class at all, instead of recess, for
19		example.
20		("Victa Depo" at pg. 34:8-25)
21	#29 (Ms. Victa was making sure that Plaintiff was	Disputed.
22	safe.)	(B.B.'s Response to
23	(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	Interrogatories propounded by Cleo Victa No. 18)
24	#30 (Ms. Victa only asked Plaintiff "Can you go	
25	get your brother? I need to talk to him" prior to	Undisputed.
26	Plaintiff going into the bathroom.)	
27	(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex.	
28	11	

1	B)	
1	#31 (During this interaction, Ms. Victa was being	Disputed. Victa was
2	nice to Plaintiff.)	aggressively following B.B.,
3	Í	even to the door of the girls'
	(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex.	restroom.
4	B)	
5		(B.B.'s Response to
6		Interrogatories propounded
		by Cleo Victa No. 18)
7	#32 (Ms. Victa never spoke with Plaintiff about the	Undisputed.
8	drawing.)	Chaispatea.
9		
	(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3,	
10	Ex. B)	Discussion Description and adjusting the
11	#33 (Becerra was far away from Plaintiff.)	Disputed. Becerra relatively close to the incident with
12	(B.B. Depo Vol. 2, 75:17-19; Hylton Decl. ¶ 3, Ex.	Victa.
	B)	1 10 101
13		(Plaintiff's Exhibit A; Video
14		footage)
15	#34 (During this interaction, Mr. Becerra was not	Undisputed.
	moving, he was talking on his walkie talkie.)	5 11 02 25 p 03 5 0 1
16	(D.D. Davis, Wall 2, 75.5 (c. 11, 16, Haddan Davil #2)	
17	(B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3, Ex. B)	
18	#35 (After Becerra talked to Plaintiff about the	Disputed to the extent that
	drawing, he never talked to her about the drawing	Becerra made B.B. feel
19	again.)	ashamed and embarrassed for
20		her drawing. Becerra also
21	(Decl. ¶ 3, Ex. B)	called B.B. a "liar" when
		B.B. wrote him a letter asking
22		him to be kinder in the
23		response of Boyle going through the appeals process.
24		anough the appeals process.
		(Response to Interrogatory
25		No. 15(3))
26		
27		
	///	

1

3. Plaintiff's Fifth Cause of Action under 42 U.S.C. § 1983 for Retaliatory Harassment against Victa is not barred by qualified immunity as Plaintiff has supporting evidence of a constitutional violation.

4

GENUINE DISPUTES OF MATERIAL FACTS

and

Facts

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Defendant's

Supporting Evidence #25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student who would not go back to class.)

Uncontroverted

Undisputed.

Undisputed.

Supporting Evidence

Plaintiff's

10

11

12

14

15 **16**

17

18 19

20

21 22

23 24

25 **26**

27

13

Ex. F.) #26 (Victa was a counselor at Viejo Elementary during this school year.)

(Deposition of Cleo Victa taken on October 11,

2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7,

(Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)

#27 (Ms. Victa was concerned that Plaintiff's brother would leave campus.)

(Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)

Disputed. Defendants' supporting evidence merely shows that Victa was little" concerned but that Becerra was not concerned about safety issues regarding the students at this time.

Response

and

("Victa Depo" at pg. 26:9-11; pg. 24:21-23; pg. 25:2)

#28 (Ms. Victa was concerned for Plaintiff and her brother's safety because they were not in class.)

Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F

Disputed. Defendants' supporting evidence does not distinguish which class Plaintiff or her brother were to be in, if any class at all, instead of recess. for example.

1		("Victa Depo" at pg. 34:8-25)
1	#29 (Ms. Victa was making sure that Plaintiff was	Disputed.
2	safe.)	•
3		(B.B.'s Response to
	(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	Interrogatories propounded
4		by Cleo Victa No. 18)
5	#30 (Ms. Victa only asked Plaintiff "Can you go	Undisputed.
6	get your brother? I need to talk to him" prior to	•
	Plaintiff going into the bathroom.)	
7	(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex.	
8	(B.B. Depo voi. 2, 72.17-23, Hyllon Deci. § 3, Ex. B)	
9	#31 (During this interaction, Ms. Victa was being	Disputed. Victa was
	nice to Plaintiff.)	aggressively following B.B.,
10	,	even to the door of the girls'
11	(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex.	restroom.
	B)	
12		(B.B.'s Response to
13		Interrogatories propounded
14		by Cleo Victa No. 18)
	#32 (Ms. Victa never spoke with Plaintiff about the	Undisputed.
15	drawing.)	Ondisputed.
16		
17	(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3,	
	Ex. B)	
18		

4. Becerra is not entitled to qualified immunity as he did violate a clearly established constitutional right.

GENUINE DISPUTES OF MATERIAL FACTS

Defendant's Uncontroverted Fa	cts and	l Plaintiff's	Response	and
Supporting Evidence		Supporting		
#6 (Clay's email stated, "My husband not tolerate any more messages give daughter at school because of her skin the administrator we trust you know	color As	r s	l.	

1	that need to be taken to address the issue.")	
2	(Hylton Decl. ¶ 5, Ex. D; Clay Depo, 93:1-14.)	
3	#11 (Plaintiff further alleges Becerra told Plaintiff	Undisputed.
4	to apologize to M.C.)	1
5	(B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A)	
6	#25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student	Undisputed.
7	who would not go back to class.)	
8	(Deposition of Cleo Victa taken on October 11,	
9	2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7, Ex. F.)	
10 11	#26 (Victa was a counselor at Viejo Elementary	Undisputed.
12	during this school year.)	
13	(Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)	
14	#27 (Ms. Victa was concerned that Plaintiff's	Disputed. Defendants'
15	brother would leave campus.)	supporting evidence merely shows that Victa was "a
16	(Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	little" concerned but that Becerra was <i>not</i> concerned
17		about safety issues regarding
18		the students at this time.
19		("Victa Depo" at pg. 26:9-11;
20	#28 (Ms. Victa was concerned for Plaintiff and her	pg. 24:21-23; pg. 25:2) Disputed. Defendants'
21	brother's safety because they were not in class.)	supporting evidence does not distinguish which class
22	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	Plaintiff or her brother were
23		to be in, if any class at all, instead of recess, for
24		example.
25		("Victa Depo" at pg. 34:8-25)
26 27	#29 (Ms. Victa was making sure that Plaintiff was safe.)	Disputed.
28	15	
	DI AINTHESO OF A TEMENT OF CENTURE DE	ICDITEC OF MATERIAL

1 2	(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	(B.B.'s Response to Interrogatories propounded by Cleo Victa No. 18)
3	#30 (Ms. Victa only asked Plaintiff "Can you go get your brother? I need to talk to him" prior to	Undisputed.
4	Plaintiff going into the bathroom.)	
5	(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex.	
6	(B)	
7	#31 (During this interaction, Ms. Victa was being nice to Plaintiff.)	Disputed. Victa was aggressively following B.B.,
8	mee to I faintiff.)	even to the door of the girls'
9	(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex. B)	restroom.
10		
11		(B.B.'s Response to Interrogatories propounded
12		by Cleo Victa No. 18)
13	#32 (Ms. Victa never spoke with Plaintiff about the drawing.)	Undisputed.
14		
15	(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3, Ex. B)	
16	#33 (Becerra was far away from Plaintiff.)	Disputed. Becerra relatively
	·	close to the incident with
17	(B.B. Depo Vol. 2, 75:17-19; Hylton Decl. ¶ 3, Ex. B)	Victa.
18	(B)	(Plaintiff's Exhibit A; Video
19		footage)
20	#34 (During this interaction, Mr. Becerra was not moving, he was talking on his walkie talkie.)	Undisputed.
21	moving, he was talking on his walkle talkie.)	
22	(B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3,	
23	Ex. B)	

5. Victa is not entitled to qualified immunity as he did violate a clearly established constitutional right.

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GENUINE DISPUTES OF MATERIAL FACTS

2		
3	Defendant's Uncontroverted Facts and	Plaintiff's Response and
4	Supporting Evidence	Supporting Evidence
5	#25 (On August 23, 2022, Ms. Victa was asked to	Undisputed.
6	come outside by Mr. Becerra to help with a student who would not go back to class.)	•
7	who would not go odek to class.)	
8	(Deposition of Cleo Victa taken on October 11,	
	2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7, Ex. F.)	
9	#26 (Victa was a counselor at Viejo Elementary	Undisputed.
10	during this school year.)	1
11		
12	(Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)	D: 1
13	#27 (Ms. Victa was concerned that Plaintiff's brother would leave campus.)	Disputed. Defendants' supporting evidence merely
14	orother would leave earnpas.)	shows that Victa was "a
15	(Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	little" concerned but that
16		Becerra was <i>not</i> concerned about safety issues regarding
		the students at this time.
17		((T) - D - N
18		("Victa Depo" at pg. 26:9-11; pg. 24:21-23; pg. 25:2)
19	#28 (Ms. Victa was concerned for Plaintiff and her	Disputed. Defendants'
20	brother's safety because they were not in class.)	supporting evidence does not
21		distinguish which class Plaintiff or her brother were
22	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	to be in, if any class at all,
23		instead of recess, for
24		example.
		("Victa Depo" at pg. 34:8-25)
25	#29 (Ms. Victa was making sure that Plaintiff was	Disputed.
26	safe.)	(B.B.'s Response to
27	(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	Interrogatories propounded
28	DI AINTHES CTATEMENT OF CENTURE D	ICDUTES OF MATERIAL

1		by Cleo Victa No. 18)
2	#30 (Ms. Victa only asked Plaintiff "Can you go get your brother? I need to talk to him" prior to	Undisputed.
3	Plaintiff going into the bathroom.)	
4	(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex.	
5	B)	
6	#31 (During this interaction, Ms. Victa was being nice to Plaintiff.)	Disputed. Victa was aggressively following B.B.,
7		even to the door of the girls'
8	(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex. B)	restroom.
9		(B.B.'s Response to
10		Interrogatories propounded by Cleo Victa No. 18)
11	#32 (Ms. Victa never spoke with Plaintiff about the drawing.)	Undisputed.
12	mawnig.	
13	(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3, Ex. B)	
14	LA. D)	

6. Plaintiff's Third Cause of Action for "Intentional Infliction of Emotional Distress" and Fourth Cause of Action for "Negligent Hiring, Supervision, and/or Retention" do not fail as a matter of law.

GENUINE DISPUTES OF MATERIAL FACTS

20	Defendant's Uncontroverted Facts and	Plaintiff's Response and
21	Supporting Evidence	Supporting Evidence
22	#24 (Plaintiff never filed a Tort Claim prior to	Disputed. Chelsea Boyle,
23	filing her Complaint.)	Plaintiff's mother and
24		guardian ad litem, filed a tort
	(Plaintiff's Response to District's Request for	claim and was going through
25	Admissions No. 16; Hylton Decl. ¶ 9, Ex. H)	the internal complaint process
26		with CUSD, telling them she
20		was seeking counsel, giving
27		notice to the Defendants of

8

28

the claims herein.	
	Ĺ
("Defendants' Motion of Summary Judgment" at p	3

7. Plaintiff's Third Cause of Action for "Intentional Infliction of Emotional Distress" against Becerra does not fail to state a claim as Defendant suggests.

GENUINE DISPUTES OF MATERIAL FACTS

9	Defendant's Uncontroverted Facts and	Plaintiff's Response and
10	Supporting Evidence	Supporting Evidence
11 12	#9 (Plaintiff alleges Becerra told Plaintiff that the drawing was inappropriate.)	Disputed. Becerra told Plaintiff the drawing was "inappropriate" and "racist."
13 14	(B.B. Depo Vol. 1, 33:24 – 34:4; Hylton Decl. ¶ 2, Ex. A)	33:16-20)
15 16	#11 (Plaintiff further alleges Becerra told Plaintiff to apologize to M.C.)	Undisputed.
17 18	(B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A) #18 (Becerra did not tell Plaintiff she had to sit out from recess.)	Undisputed.
19 20	(B.B. Depo Vol. 2 63:13-15; Hylton Decl. ¶ 3, Ex. B)	
21 22	#22 (At no time when Plaintiff was at school was Becerra mean to her.)	Disputed. Becerra made B.B. feel ashamed and embarrassed for her drawing.
23 24	(B.B. Depo Vol. 2, 51:2-5; Hylton Decl. ¶ 3, Ex. B)	Becerra also called B.B. a "liar" when B.B. wrote him a letter asking him to be kinder
252627		in the response of Boyle going through the appeals process.

1		
		(B.B.'s Response to Becerra's
2		Interrogatories No. 15(3))
3	#33 (Becerra was far away from Plaintiff.)	Disputed. Becerra relatively
3		close to the incident with
4	(B.B. Depo Vol. 2, 75:17-19; Hylton Decl. ¶ 3, Ex.	Victa.
_	B)	
5		(Plaintiff's Exhibit A; Video
6		footage)
7	#34 (During this interaction, Mr. Becerra was not	Undisputed.
/	moving, he was talking on his walkie talkie.)	_
8		
	(B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3,	
9	Ex. B)	
10		

8. Plaintiff's Third Cause of Action for "Intentional Infliction of Emotional Distress" against Victa does not fail to state a claim as Defendant suggests.

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12

13

GENUINE DISPUTES OF MATERIAL FACTS

13	GETTER DISTURES OF WITH	ERRITE TITE TO
14	Defendant's Uncontroverted Facts and	Plaintiff's Response and
15	Supporting Evidence	Supporting Evidence
16	#25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student	Undisputed.
17	who would not go back to class.)	
18	(Deposition of Cleo Victa taken on October 11,	
19	2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7, Ex. F.)	
20 21	#26 (Victa was a counselor at Viejo Elementary during this school year.)	Undisputed.
22		
23	(Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)	
24	#27 (Ms. Victa was concerned that Plaintiff's	Disputed. Defendants'
25	brother would leave campus.)	supporting evidence merely shows that Victa was "a
26	(Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	little" concerned but that
27		Becerra was <i>not</i> concerned about safety issues regarding
28	20	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

1		the students at this time.
2		
3		("Victa Depo" at pg. 26:9-11; pg. 24:21-23; pg. 25:2)
4	#28 (Ms. Victa was concerned for Plaintiff and her	Disputed. Defendants'
5	brother's safety because they were not in class.)	supporting evidence does not distinguish which class
6	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	Plaintiff or her brother were
7		to be in, if any class at all,
8		instead of recess, for example.
9		("Victa Depo" at pg. 34:8-25)
10	#29 (Ms. Victa was making sure that Plaintiff was	Disputed.
11	safe.)	
12	(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	(B.B.'s Response to
13		Interrogatories propounded by Cleo Victa No. 18)
14	#30 (Ms. Victa only asked Plaintiff "Can you go	Undisputed.
15	get your brother? I need to talk to him" prior to Plaintiff going into the bathroom.)	
16		
17	(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex. B)	
18	#31 (During this interaction, Ms. Victa was being	Disputed. Victa was
19	nice to Plaintiff.)	aggressively following B.B., even to the door of the girls'
20	(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex.	restroom.
21	B)	
22		(B.B.'s Response to
23		Interrogatories propounded by Cleo Victa No. 18)
24	#32 (Ms. Victa never spoke with Plaintiff about the	Undisputed.
25	drawing.)	
26	(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3,	
27	Ex. B)	

9. Plaintiff's Fourth Cause of Action for "Negligent Hiring, Supervision and/or Retention" against Capistrano Unified School District does not fail to state a claim as Defendant suggests. Capistrano Unified School District did in fact breach its duty to Plaintiff in Negligent Supervision and/or Retention of Becerra and Victa.

GENUINE DISPUTES OF MATERIAL FACTS

/ II		
8 9 0 1 2 3	#9 (Plaintiff alleges Becerra told Plaintiff that the drawing was inappropriate.) (B.B. Depo Vol. 1, 33:24 – 34:4; Hylton Decl. ¶ 2, Ex. A) #11 (Plaintiff further alleges Becerra told Plaintiff to apologize to M.C.)	Disputed. Becerra told Plaintiff the drawing was "inappropriate" and "racist." ("B.B. Depo" Vol. 1, at pg 33:16-20) Undisputed.
4 5 6 7 8	(B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A) #25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student who would not go back to class.) (Deposition of Cleo Victa taken on October 11, 2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7, Ex. F.)	Undisputed.
9 0 1 2 3	#26 (Victa was a counselor at Viejo Elementary during this school year.) (Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F) #27 (Ms. Victa was concerned that Plaintiff's brother would leave campus.)	Undisputed. Disputed. Defendants' supporting evidence merely shows that Victa was "a
4 5 6 7	(Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	little" concerned but that Becerra was <i>not</i> concerned about safety issues regarding the students at this time.

1 2		("Victa Depo" at pg. 26:9-11; pg. 24:21-23; pg. 25:2)
3	#28 (Ms. Victa was concerned for Plaintiff and her	Disputed. Defendants'
4	brother's safety because they were not in class.)	supporting evidence does not distinguish which class
5		Plaintiff or her brother were
	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	to be in, if any class at all,
6		instead of recess, for example.
7		example.
8	1100 (D.E. A.T.)	("Victa Depo" at pg. 34:8-25)
9	#29 (Ms. Victa was making sure that Plaintiff was safe.)	Disputed.
10		(B.B.'s Response to
11	(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	Interrogatories propounded by Cleo Victa No. 18)
12	#30 (Ms. Victa only asked Plaintiff "Can you go	Undisputed.
13	get your brother? I need to talk to him" prior to Plaintiff going into the bathroom.)	
14		
15	(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex. B)	
16	#31 (During this interaction, Ms. Victa was being	Disputed. Victa was
17	nice to Plaintiff.)	aggressively following B.B., even to the door of the girls'
18		restroom.
19	(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex. B)	(B.B.'s Response to
20	D)	Interrogatories propounded
21		by Cleo Victa No. 18)
	#32 (Ms. Victa never spoke with Plaintiff about the drawing.)	Undisputed.
22	drawing.)	
23	(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3,	
24	Ex. B) #33 (Becerra was far away from Plaintiff.)	Disputed. Becerra relatively
25	1133 (Decella was far away from Flammin.)	close to the incident with
26	(D.D. Dono Vol. 2, 75,17,10, Halter, Darl # 2, E	Victa.
27	(B.B. Depo Vol. 2, 75:17-19; Hylton Decl. ¶ 3, Ex. B)	(Plaintiff's Exhibit A; Video
28	23	/
	DI AINTIEESCOTATEMENT OF CENTIME DI	

1		footage)	
2	#34 (During this interaction, Mr. Becerra was not moving, he was talking on his walkie talkie.)	Undisputed.	
3			
4	(B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3,		
5	Ex. B)		
6			
7	DATED: January 22, 2024 HEATH LAW	, PLLC	
8			
9 10			
	By: <u>/s/ Amber R. Terry</u>		
11		R. TERRY	
12	Attorney	for Plaintiff	
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